

ORDINANCE NO. 12- 60

BE IT ORDAINED by the City Council of the City of Huntsville, Alabama as follows:

SECTION 1. Chapter 18 of the Code of Ordinances of the City of Huntsville, Alabama is hereby amended as follows:

ARTICLE I. RESIDENTIAL SOLICITATION

DIVISION 1. RESIDENTIAL SOLICITATION IN GENERAL

Sec. 18-1. Purpose; scope.

(a) The city council finds that its citizens have the right to be secure from unwanted intrusion into their privacy and from criminal or fraudulent conduct or activity. The city council further finds that solicitation at a residence directly implicates the security of citizens of this city and city officials have received and are aware of citizen complaints about certain practices or conduct associated with solicitation in this city including fraud. The city council is also aware of criminal activity occurring in other cities as a result of solicitors gaining access to residences under the guise of soliciting. The city council recognizes that there are constitutional guarantees associated with the practice of soliciting which are to be respected and safeguarded. Therefore, the purpose of this article is to adopt police power regulations which are designed to protect the security of citizens in their lives, their homes, and their property, and which do not offend constitutional guarantees.

(b) This article shall have full force and effect throughout the corporate limits of the city and is intended to regulate all forms of solicitation that physically occur at a residence, whether commonly known as soliciting, peddling, hawking, canvassing, or other similar terms.

Sec. 18-2. Definitions.

(a) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Commercial solicitor means a person who engages or attempts to engage in residential selling.

Competent individual means a person claiming or reasonably appearing to be at least nineteen years of age, or who claims to be an emancipated minor, and who reasonably appears to be of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct, or to otherwise have the capacity to contract.

Disqualifying factors mean:

- (1) A person has been criminally convicted of (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence

of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) or has criminal charges currently pending against them for:

- a. Homicide or manslaughter of any type, class, or degree;
- b. Physically abusing, sexually abusing, or exploiting a minor;
- c. The sale or distribution of controlled substances;
- d. Sexual assault of any type, class, or degree; or
- e. Theft, robbery, burglary, or assault, of any type class, or degree.

(2) A person has been criminally convicted (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) for a felony in the last ten (10) years.

(3) A person has been confined or imprisoned in a federal or state prison within the last ten (10) years.

(4) A person has been criminally convicted (which includes any disposition of a criminal case resulting in the imposition of a fine, probation, incarceration, or other adverse sentence of a punitive nature, whether or not the person has been formally adjudicated guilty, unless the conviction has been set aside on appeal or pursuant to a writ of habeas corpus) of a misdemeanor within the past five (5) years involving a crime of moral turpitude according to the laws of this state, or violent or aggravated conduct involving persons or property.

(5) A person has a final civil judgment, which means that the judgment has preclusive effect, entered against them within the last five (5) years involving fraud or intentional misrepresentation;

(6) A person is currently on parole or probation to any court, penal institution, or governmental entity, which include being under house arrest or subject to a tracking device;

(7) A person has an outstanding warrant from any jurisdiction; or

(8) A person is currently subject to a protective order, based on physical or sexual abuse, issued by a court of competent jurisdiction.

Goods means tangible items of any kind, character, or nature, which include merchandise, wares, foodstuffs, perishables, publications, periodicals, magazines, newspapers, subscriptions, computer hardware or software, manufactured or compounded products, or goods the sale of which otherwise requires a business license.

Manager means a person that manages, supervises, or oversees a professional or commercial solicitor, whether or not the manager actually solicits.

Master solicitor means a person that employs, hires, engages, or otherwise uses a professional solicitor for soliciting. A master solicitor who is an individual must be at least nineteen (19) years of age.

Master solicitor's permit or *master permit* means the master solicitation permit issued in accordance with division 2 of this article.

Professional solicitor means a person who for a fee or other compensation solicits on behalf of another whether as an employee, agent, independent contractor, or otherwise. A bona fide officer or employee of the charitable or nonprofit association, organization, or corporation for which the solicitation is being conducted shall not be included in the definition of a professional solicitor.

Residence means and includes every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Residential advocacy means, while upon residential property, engaging or attempting to engage an occupant of the residence in conversation, without that person's prior invitation or consent, for the purpose of promoting or facilitating the receipt of information regarding a cause, practice, or belief, which includes charitable, political, religious, eleemosynary, social, philanthropic, benevolent, humanitarian, environmental, health-related, patriotic, civic, or educational causes, practices, or beliefs.

Residential fundraising means, while upon residential property, obtaining or attempting to obtain from an occupant of a residence, without that persons prior invitation or consent, any form of gift, donation, or contribution of money, clothing, or any other thing of value, for the support or benefit of any charitable or nonprofit association, organization, corporation, or project, or for any other purpose. The providing of an item of value in exchange for the gift, donation, or contribution shall not constitute a sale of the item so long as the primary purpose of the transaction is not commercial in nature, but remains charitable or not-for-profit.

Residential property means property on which a residence is located.

Residential selling means, while upon residential property, making or attempting to make, or engaging or attempting to engage in conversation with the purpose of making, a sale of or to take an order for goods or services from an occupant of the residence, without that person's prior invitation or consent, regardless of the timing or method of payment, remuneration, or consideration, and regardless of the time of delivery of the goods or performance of the service.

Services means any or all intangible goods or benefits of any kind, character, or nature, which include construction, maintenance, repairs, improvements, professional services, insurance coverage, housekeeping, landscaping or yard care, real estate products or services, investment opportunities, technical services, computer services, communications services including cable, internet, and telecommunications services, or services for which a business license is otherwise required.

Soliciting or *solicit* or *solicitation* means residential advocacy, residential fundraising, or residential selling.

Solicitor means any person engaged in soliciting.

Solicitor's permit means the solicitor's permit and accompanying photo identification tag issued in accordance with division 2 of this article.

Volunteer solicitor means a person that engages in residential advocacy or residential fundraising that is not a professional solicitor.

(b) Where not otherwise defined in subsection (a) of this section, the words, terms, and phrases, when used in this article, shall have the meanings and rules of construction ascribed to them in section 1- 2 of this Code, except where the context clearly indicates a different meaning.

Sec. 18-3. Notice regulating residential soliciting.

(a) *Form of notice.* Any occupant of a residence may give notice of a desire to refuse any or all types of soliciting by posting a reasonably visible and legible sign upon or near the main entrance door or main entrance gate to the residence, or on or near the property line adjacent to the sidewalk leading to the residence. Where the notice states "No Solicitation" or "No Trespassing", or words of similar import, then all forms of solicitation, which include residential advocacy, residential fundraising, and residential selling, are prohibited at such residence. Where the sign specifies refusal for a particular type of solicitation, such as "No Residential Advocacy", "No Residential Fundraising", or "No Residential Selling", alone or in any combination, then such types as specified are prohibited from being conducted at such residence, but the other types of solicitation not so specified are allowed.

(b) *Effect.* Any such sign so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence regarding soliciting at such residence.

(c) *Duty to abide by notice.* It shall be the duty of every solicitor upon going onto any residential property in the city to first examine for the notice provided for in this section and, if one is found to exist, to abide by the notice by immediately and peacefully departing from the property without making any effort to conduct or engage in the prohibited solicitation.

(d) *Uninvited soliciting unlawful.* It is hereby declared to be unlawful for any person to go upon any residential property and ring the doorbell upon or near any door of a residence located thereon, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in, or attempt to engage in, soliciting, in defiance of the notice exhibited at the residence in accordance with the provisions of this section.

Sec. 18-4. Duty of solicitors.

(a) In no event will any solicitor enter inside or follow a person into a residence without the express invitation or permission of the occupant who must be a competent individual. Any solicitor who has gained entrance into any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

(b) It is a violation for any solicitor through ruse, deception, or fraudulent concealment of a purpose, to solicit or to take action calculated to secure an audience with an occupant of a residence.

(c) A solicitor while soliciting shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.

(d) A solicitor shall not continue repeated soliciting and shall immediately and peacefully leave the premises after the occupant of the residence has expressly declined the solicitation.

(e) A solicitor shall not engage in abusive, threatening, harassing, intimidating, or coercive conduct toward the occupant of a residence.

Sec. 18-5. Time limit on soliciting.

It is unlawful for any person, whether or not issued a solicitor's permit, to go upon any residential property and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in, or attempt to engage in, soliciting on any day prior to 8:00 a.m. or after sunset as announced and published by the National Weather Service daily based on the United States Naval Observatory, unless the solicitor has the express invitation or permission of the occupant who is a competent individual.

Sec. 18-6. Age limitations.

(a) Persons employing, managing, or otherwise using solicitors who are minors shall abide by all applicable federal and state child labor laws and it shall be unlawful and a violation of this division to fail to do so.

(b) Any person under the age of sixteen (16) who is engaged in soliciting shall be under the direct supervision of a person at least nineteen (19) years of age. Direct supervision means the supervising person shall at all time have the minor in sight and shall in no event be more than 100 feet away from the minor.

Sec.18-7. Restrictions on methods of solicitation.

(a) A solicitor shall not falsely represent, directly or by implication, that the solicitor is acting on behalf of a governmental organization, a charitable organization, or any person other than the person for whom the solicitor is actually acting.

(b) A solicitor shall not intentionally make any materially false or fraudulent statement in the course of soliciting.

(c) A solicitor shall use their real name and shall not use a fictitious name, an alias, or any name other than their correct name.

DIVISION 2 SOLICITATION PERMITTING

Sec.18-8. Permit required; exemption.

(a) *Solicitor's permit.* A commercial or professional solicitor shall be required to obtain a solicitor's permit prior to soliciting and failure to do so shall constitute a violation of this article. At all times while soliciting, the solicitor shall be required to carry and present the permit upon the request of

the person being solicited or a law enforcement officer, and to conspicuously display the photo identification tag hereinafter provided for.

(b) *Master solicitor's permit.* A master solicitor may make application for a solicitor's permit for each of the professional solicitors that will be soliciting on the master solicitor's behalf by applying for a master solicitor's permit as hereinafter provided.

(c) *Exemption.* A solicitor's permit shall not be required for a volunteer solicitor.

Sec.18-9. Permit application.

(a) *Form, etc.* Applications for permitting under this division shall be made on forms provided by the city clerk-treasurer for such purpose and shall be signed and verified by oath or affirmation by the applicant if a natural person or, in the case of an association, partnership, or limited liability company, by a member or partner, or in the case of a corporation by an executive officer, or any person specifically authorized by the corporation to sign the application to which shall be attached written evidence of his authority. Prior to or after the issuance of a permit, applications shall be immediately updated should there be a change in any of the information provided, or additional information to be added. It shall be the duty of the master solicitor to update its application for a master solicitor's permit, which includes adding or removing its professional solicitors, as appropriate.

(b) *Master solicitor's permit application.* A master solicitor may make application for a master permit to include solicitor's permits for each of the professional solicitors who will be conducting soliciting on the master solicitor's behalf. Each solicitor's permit issued under a master permit shall be conditioned upon the continued validity of the master permit and subject to all actions taken against the master permit. In addition to the information required under subsection (c) of this section, the master solicitor shall furnish each of the following:

- (1) The master solicitor's true and correct name (which includes any former names or aliases used during the last ten years) and complete then-current contact information which includes telephone number and permanent and local business address (not a post office box);
- (2) Proof of the master solicitor's tax exemption status, if applicable;
- (3) The master solicitor's social security number or federal identification number;
- (4) Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the person is required to have in order to conduct the proposed solicitation. Copies of all such licenses and permits shall be attached to the application;
- (5) The name, address, and telephone number of the master solicitor's registered agent for service of process in this state, as required by state law;
- (6) The nature of the business relationship of the solicitor to the master solicitor, which includes as an employee, agent, or independent contractor; and
- (7) The certification required in subsection (e) of this section, which shall be confirmed by way of a criminal history record background check in accordance with subsection (e) of this section.

(c) *Solicitor's permit application.* The application for a solicitor's permit shall contain the following information for each person who will be conducting solicitation activities as a professional or commercial solicitor:

- (1) The proposed solicitor's true and correct name (which includes any former names or aliases used during the last ten years), date of birth, social security number, and then-current contact information which includes telephone number and permanent home and local address (not a post office box);
- (2) The proposed solicitor's valid state driver's license or a state-approved identification card with a photograph (The city clerk-treasurer will make a photocopy and attach to the application);
- (3) If a vehicle is used, a description of the same, together with the state where licensed, license number, and the vehicle identification number;
- (4) Two photographs suitable for reproduction, measuring at least 1.5 inch x 1.5 inch and showing the head and shoulders of the proposed solicitor in a clear and distinguishing manner, which shall have been taken within the preceding 60 days before filing the application;
- (5) Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the person is required to have in order to conduct the proposed solicitation. Copies of all such licenses and permits shall be attached to the application;
- (6) If the proposed solicitor is soliciting on behalf of a master solicitor, the solicitor shall furnish the information concerning its master solicitor that is required in subsection (b) of this section together with appropriate written credentials that authorize the solicitor to solicit on the master solicitor's behalf;
- (7) The nature of solicitation activity (i.e. the goods to be sold or offered for sale; or the nature of the services to be furnished; or the type of fundraising to be conducted);
- (8) The approximate time period when the soliciting will be conducted, this includes the projected start date and completion date, and the proposed days of the week and times of day of solicitation;
- (9) The names of all other cities in which the proposed solicitor has conducted solicitation activities in the past six months;
- (10) Whether the proposed solicitor will receive a payment for goods or services at the time of solicitation or will demand, accept, or receive payment or the deposit of money in advance of final delivery, and if so, the amount sought or the basis for calculation of such payment;
- (11) The certification required in subsection (e) of this section, which shall be confirmed by way of a criminal history record background check in accordance with subsection (e) of this section; and
- (12) If the proposed solicitor has a manager that is or will be present in the city during all or any portion of the solicitation, the applicant shall provide the name, permanent and full local business address (not a post office box), and complete contact information of the manager.

(d) Each applicant shall provide an address where all notices required to be issued under this article are to be sent and if there is a local address, then such address shall be that address.

(e) *Background report; certification; investigation.*

(1) *Background report.* In order to confirm whether or not a disqualifying factor exists, each applicant shall provide an original, validly obtained, up-to-date background report, which includes a criminal history record background check that the applicant is authorized to provide to the city for the regulatory purposes of this article; or, in the alternative, to provide proper authorization or waiver, on forms and in the manner prescribed by the chief of police, in order for the chief of police to confirm whether or not a disqualifying factor exists. If the applicant prefers that the chief of police obtain the report, then the applicant shall pay to the city an administrative handling fee not to exceed the actual costs for obtaining the report.

(2) *Certification.* Where solicitation will be conducted on behalf of a master solicitor, each application for a solicitor's permit or master solicitor's permit shall include a written certification from the master solicitor, on forms provided by the city clerk-treasurer, that no disqualifying factors exist for each solicitor or the master solicitor, or, in the case of an entity, its controlling officers, directors, partners, or members, as the case may be. Such certification shall be signed and verified by oath or affirmation in the same manner as the application. Where the solicitation will not be conducted on behalf of a master solicitor, then the applicant for a solicitor's permit shall be required to so certify.

(3) *Investigation.* The chief of police and city clerk-treasurer, or their respective designees, are hereby authorized to conduct an investigation they deem appropriate into the matters contained in the application. The applicant's submission of the application authorizes the city to verify information submitted with the application.

(f) *Solicitation by minors; application.* A minor who conducts commercial or professional solicitation shall operate under the authority of a master solicitor who will be responsible for controlling the conduct of the minors.

(g) *Application fee.* At the time of submission of an application, each applicant shall pay a non-refundable fee, in an amount to be determined by the city clerk-treasurer, which is sufficient to defray the costs incurred by the city for processing the application and issuing the photo identification tag.

Sec. 18-10. Permit issuance.

(a) Upon receipt of a completed application and completion of any investigation, then the city clerk-treasurer shall issue a solicitor's permit or master solicitor's permit, as appropriate, unless he finds any one of the following bases for denial exists:

- (1) The application for permitting is not complete;
- (2) False or misleading statements are found to be included in the application for a permit;
- (3) The applicant or the applicant's master solicitor has a disqualifying factor or does not

otherwise meet the requirements of this article;

(4) Within the twelve (12) months preceding the date of the application, the applicant or the applicant's master solicitor has had a prior permit issued pursuant to this article revoked or denied;

(5) Within the twelve (12) months preceding the date of the application, the applicant or applicant's master solicitor has been found to have violated a provision of this article;

(6) The applicant has failed to pay the application fee; or

(7) The applicant or applicant's master solicitor has not obtained proper business licensing or the business license has been denied, revoked, suspended, or not renewed.

(b) If an application is denied, the reasons for denial shall be noted on the application.

(c) Each solicitor's permit shall be issued accompanied by a photo identification tag which shall be worn constantly by the permittee in a conspicuous place on his or her person while conducting solicitation activities in the city. A person commits an offense if the person wears or displays a photo identification tag issued to another person or alters a photo identification issued hereunder. Any solicitor who by affidavit notifies the city clerk-treasurer that his or her badge has been lost or stolen shall be issued a replacement badge upon payment of the fee for the badge.

(d) Permits are hereby expressly issued upon the condition that the holder thereof shall abide by the provisions of this article, and operate in conformance with the statements or representations contained in the permit application, which includes the nature of the solicitation activity and the timing of solicitation. All permits issued pursuant to this article are not transferrable.

(e) In no event shall the holder of a permit issued under this article represent or imply that the issuance of the permit or display of the photo identification tag means that the city in any way endorses the purpose or method of the solicitation.

(f) Unless revoked sooner, permits issued pursuant to this division shall be valid for the dates and times specified on the application, provided, however, no permit issued hereunder shall be valid for more than a consecutive twelve-month period of time. Upon expiration of a permit or where not renewed, it shall be unlawful to continue to solicit or to display the expire permit or photo identification tag for the purpose of soliciting.

(g) Permits may be renewed in the same manner as the original issuance.

Sec. 18-11. Revocation or suspension of permit.

(a) A master solicitor's permit or solicitor's permit may be revoked or suspended by the city clerk-treasurer for any of the following reasons:

(1) The city clerk-treasurer finds that any fact or event which would constitute a basis for denial of the permit is true or has become true since the application was completed; or

(2) The solicitor conducts solicitation activities in violation of any provision of this article.

(b) *Action against master.*

(1) Should more than one complaint be received that solicitors for any one master solicitor have violated any of the provisions of this article, the city clerk-treasurer may suspend or revoke all solicitor permits for such master solicitor and notify the permit holders of such action.

(2) Should more than one complaint be received that solicitors who are soliciting under a master solicitor's permit have violated any of the provisions of this article, the city clerk-treasurer may suspend or revoke the master permit and notify the master solicitor, which shall have the effect of revoking all the solicitor's permits issued under the master permit without the need of further action by the city or notification of each solicitor.

(3) Upon any action being taken to suspend or revoke a master solicitor's permit, all solicitor's permits issued under the master permit shall be included in such action and the right to appeal the action shall be solely that of the master solicitor.

(c) Upon revocation or suspension, the director shall immediately deliver written notice to the permit holder stating the action and the reasons supporting such action. A written notice shall be delivered or mailed by first class or certified mail to the permit holder's address as shown on the application. Where permits are issued under a master permit, the notice to the holder of the master permit shall constitute sufficient notice to all solicitors working under the master permit.

(d) The director shall have the authority to seize any and all permits and photo identification tags possessed by persons conducting business as a solicitor while the official notification process and any appeals process is underway if the basis for the action is the existence or occurrence of a disqualifying factor or if the chief of police finds that there is an immediate threat to the public health or safety if the soliciting is allowed to continue. Upon seizure of the permit and tag all solicitation activities conducted under the authority of that permit shall cease.

Sec. 18-12. Appeals.

(a) A person who is denied a solicitor's permit or master solicitor's permit, or whose permit is revoked or suspended by the city clerk-treasurer, may appeal the decision to the appeals officer designated by the mayor by filing a written notice of appeal with the city clerk-treasurer, stating the action appealed from and grounds for the appeal, with the city clerk-treasurer within fifteen (15) days after the notice of decision is given; a notice shall be deemed given upon delivery or three (3) days after mailing, to the address indicated on the application.

(b) Within ten (10) days of the receipt of the notice of appeal, the appeals officer shall set a time and place for a hearing on the appeal which shall be not later than thirty (30) days from the date of receipt of the notice of appeal.

(c) Notice of the time and place of the hearing shall be delivered or mailed, by first class or certified mail, to the appellant at the address indicated on the application. Notice shall be sent at least fifteen (15) days before the date scheduled for the hearing.

(d) The decision of the appeals officer on the appeal is final. No other administrative procedures are provided by the city.

SECTION 2. The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

SECTION 3. This Ordinance shall become effective upon its adoption and approval.

ADOPTED this the _____ day of _____, 2012.

President of the City Council
Of the City of Huntsville, Alabama

APPROVED this the _____ day of _____, 2012.

Mayor of the City of
Huntsville, Alabama